

**CALIFORNIA COASTAL COMMISSION**

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## Staff Report: Appeal De Novo Hearing

**Application number** .....A-3-MCO-03-066, McWethy

**Applicant**.....McWethy Management Partnership

**Appellants** .....Commissioners Reilly and Wan

**Project location**.....Hurricane Point (between mile posts 58 & 59, south of Hurricane Point Overlook, between Highway 1 and the ocean), Big Sur (Monterey County) (APN 418-171-001).

**Project description**.....Demolition of an existing, approximately 2,225 sq. ft. one-story single family residence; construction of an approximately 3,470 sq. ft. two-story single family dwelling; and design approval.

**Local approval**.....The Monterey County Planning Commission approved a Combined Development Permit Resolution 03028, (PLN020189) for the project on March 28, 2003.

**File documents**.....Monterey County certified Local Coastal Program; Final Local Action Notice 3-MCO-03-229; documents and materials from the local record provided by Monterey County on May 20, 2003.

### **Staff recommendation...Approval with Conditions**

**Summary:** The Applicant proposes to demolish an existing 2,225 square feet one-story single family dwelling with an approximate height of 15 feet, and construct a 3,470 square feet two-story single-family dwelling with a maximum height of 24 feet, within the Big Sur area of Monterey County. The replacement residence is located within the same general location as the existing residence (site plan attached as Exhibit 3), is within 150 feet of environmentally sensitive habitat, and would involve new development in the critical viewshed<sup>1</sup>.

On August 6, 2003, the Commission determined that the appeal of the County permit raised a substantial issue regarding the project's consistency with Policy 3.2.3.A.7 of the Big Sur Land Use Plan, which encourages replacement structures to be resited out of the critical viewshed, and prohibits such structures from being more visible than the development they replace. This determination was based on concerns that the larger replacement structure would be more visible from public vantage points.

<sup>1</sup> LCP policy 3.2.2 defines the critical viewshed as "everything within sight of Highway 1 and major public viewing areas including turnouts..."



**California Coastal Commission  
March 18, 2004 Meeting in Monterey**

Staff: S. Monowitz Approved by:

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Since that time, the applicant has provided additional photo documentation of both the existing and proposed structures that demonstrate the replacement structure will be no more visible than the existing structure (see Exhibit 7). In addition, the applicant has agreed to provide additional landscape screening (using Monterey cypress) that will result in the replacement structure being less visible than the existing structure. In most cases, the use of landscape screening is not an acceptable method of achieving compliance with Big Sur critical viewshed policies (e.g., to accommodate new development on a vacant site). Landscape screening is appropriate in this case, however, because it will result in a structure that is less visible than the existing structure, and because the existing site is already heavily landscaped; the proposed plantings will not block scenic views, or be out of character with the existing surroundings.

Commission staff therefore recommends that the project be **approved with conditions**. The recommended conditions incorporate the conditions required by Monterey County (attached as Exhibit 5), and supplement them by:

- Requiring installation of the landscape screening shown by Exhibit 4 prior to occupancy of the proposed residence;
- Establishing maintenance and performance standards for landscape screening to ensure that the replacement residence will not be visible from public vantage points within 5 years of its construction, and that the landscape screening will be maintained for the life of the structure;
- Expanding drainage and construction standards to prevent erosion and/or degradation of coastal water quality and adjacent sensitive habitat areas;
- Prohibiting future development on the project site outside of the approved building footprint and existing access road other than native landscaping, habitat enhancement, exotic plant removal, and drainage and erosion controls;
- Prohibiting any future increase in the height and/or size of the approved structure;
- Requiring repairs, maintenance, and improvements to the approved residence and its associated infrastructure (i.e., water, wastewater, and roadway systems) to be authorized either through an amendment to this coastal development permit or separate coastal development permit approval by Monterey County; and
- Requiring recordation of a deed restriction, to the satisfaction of the Executive Director, reflecting the above requirements and limitations.

Only with these conditions can the project be found consistent with the coastal resource protection provisions of the Monterey County certified Local Coastal Program.



## Staff Report Contents

I. Staff Recommendation on CDP Application.....	4
II. Conditions of Approval.....	4
A. Standard Conditions.....	4
B. Special Conditions .....	5
III. Recommended Findings and Declarations.....	7
A. Project Location and Description.....	7
B. Visual/Scenic Resources.....	8
1. Relevant Local Coastal Program Provisions.....	8
2. Analysis.....	10
3. Conclusion .....	12
C. Environmentally Sensitive Habitat Areas .....	12
1. Relevant Local Coastal Program Provisions.....	12
2. Analysis.....	14
3. Conclusion .....	15
D. Water Quality/Marine Resources.....	15
1. Relevant Local Coastal Program Provisions.....	15
2. Analysis.....	16
3. Conclusion .....	16
E. Public Access and Recreation.....	17
F. California Environmental Quality Act (CEQA) .....	17

### Exhibits

1. Vicinity Map
2. Parcel Map
3. Project Plans
4. Landscape Screening Plan
5. County Conditions of Approval
6. Botanical Map
7. Photographs and Visual Simulations



## I. Staff Recommendation on CDP Application

The staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development subject to the standard and special conditions below.

**Motion.** I move that the Commission approve Coastal Development Permit No. A-3-MCO-03-066 pursuant to the staff recommendation.

**Staff Recommendation of Approval.** Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution to Approve the Coastal Development Permit.** The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the Monterey County certified Local Coastal Program and the access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## II. Conditions of Approval

### A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files



with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## B. Special Conditions

1. **Compliance with Monterey County Conditions of Approval.** The applicant is responsible for complying with conditions 4, 5, 6, 9, 11, 12, 13, 14, 15, 16, 19, 22, and 23 of Monterey County Coastal Development Permit No. PLN020189, attached as Exhibit 5, which are incorporated as conditions of this permit. This action has no effect on these and all other conditions imposed by Monterey County pursuant to a planning authority other than the Coastal Act.
2. **Landscape Screening.** PRIOR TO OCCUPANCY OF THE REPLACEMENT RESIDENCE, the permittee shall submit, for Executive Director review and approval, evidence that 10 Monterey Cypress trees have been installed on the site, in the locations shown by Exhibit 4. The permittee shall be responsible for maintaining, supplementing, and replacing these trees and all other landscaping contained on the project site in a manner that will prevent the replacement structure from being visible from public vantage points within 5 years of its construction, and for as long as the structure remains on the site. Planting of exotic/non-native species is prohibited anywhere on the project site.
3. **Drainage and Erosion Control.** PRIOR TO ISSUANCE OF THE PERMIT, the applicant shall submit, for Executive Director review and approval, two sets of drainage and erosion control plans that incorporate the following provisions:

**Implementation of Best Management Practices During Construction.** The Drainage and Erosion Control Plans shall identify the type and location of the measures that will be implemented during construction to prevent erosion, sedimentation, and the discharge of pollutants during construction. These measures shall be selected and designed in accordance with the California Storm Water Best Management Practices Handbook and the criteria established by the San Luis Obispo County Resource Conservation District. Among these measures, the plans shall limit the extent of land disturbance to the minimum amount necessary to construct the project; designate areas for the staging of construction equipment and materials, including receptacles and temporary stockpiles of graded materials, which shall be covered on a daily basis; provide for the installation of silt fences, temporary detention basins, and/or other controls to intercept, filter, and remove sediments contained in the runoff from construction, staging, and storage/stockpile areas; and provide for the hydro seeding of disturbed areas immediately upon conclusion of construction activities in that area. The plans shall also incorporate good construction housekeeping measures, including the use of dry cleanup measures whenever possible; collecting and filtering cleanup water when dry cleanup methods are not feasible; cleaning and refueling construction equipment at



designated off site maintenance areas; any the immediate clean-up of any leaks or spills. PRIOR TO THE COMMENCEMENT OF GRADING, the applicant shall delineate that the approved construction areas with fencing and markers to prevent land-disturbing activities from taking place outside of these areas.

**Post Construction Drainage.** All runoff from impervious surfaces such as roofs, driveways, parking lots, walks, patios, decks, etc., shall be collected and conveyed through an appropriate filtration mechanism (e.g. vegetated and/or gravel filter strips or other media device). The drainage plan shall identify the specific type, design, and location of all drainage infrastructure necessary to ensure that post construction drainage from the project does not result in erosion, sedimentation, or the degradation of coastal water quality. The capacity of filtration and treatment features shall be adequate to effectively remove sediments and pollutants during an 85th percentile runoff event. In areas where rocks or other energy dissipation structure are needed, the drainage plan shall include detailed plans that limit the size and footprint of such structure to the minimum necessary to achieve effective erosion control. The applicant/landowner or successor-in-interest shall be responsible for implementing and maintaining drainage and erosion control measures and facilities for the life of the project. This shall include performing annual inspections, and conducting all necessary clean-outs, immediately prior to the rainy season (beginning October 1), and as otherwise necessary to maintain the proper functioning of the approved drainage system. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant/landowner or successor-in-interest shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new Coastal Development Permit is required to authorize such work.

**4. Open Space Restriction.** No development, as defined in section 30106 of the Coastal Act, shall occur in the Open Space Area as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive director issues for this permit except for:

1. Restoration and landscaping activities consisting of native landscaping and exotic plant removal.
2. Minor drainage improvements consistent with the Drainage and Erosion Control Plan approved by the Executive Director pursuant to Special Condition 3.
3. Repairs and maintenance of the wastewater disposal system.

PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI OF THIS PERMIT, the Applicant shall submit for review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, which shall include all portions of Assessor Parcel Number 418-171-001 outside of the approved building and deck footprint, driveway and parking area, and existing roadway shown by Exhibit 3.



- 5. Future Development.** This permit is only for the development described in Coastal Development Permit No. A-3-MCO-03-066. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) or the Monterey County certified Local Coastal Program shall not apply to the development governed by coastal development permit No. A-3-MCO-03-066. Accordingly, any future improvements to the single family house authorized by this permit, or to the water system or roadway upon which the approved residence relies, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require an amendment to Permit No. A-3-MCO-03-066 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government. For purposes of this condition, the term "future improvements to the SFD approved by the permit" shall be interpreted to include improvements to the wastewater disposal system required by Condition 17 of the Monterey County Permit PLN020189, as well as the improvements to the driveway and water system (including fire protection water supply) called for by Conditions 8, 18, and 20 of said permit. Any future increase in the height and/or size of the approved structure is specifically prohibited.
- 6. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

### III. Recommended Findings and Declarations

The Commission finds and declares as follows:

#### A. Project Location and Description

The project is located at Hurricane Point (between mile posts 58 and 59, south of Hurricane Point Overlook, between Highway One and the ocean), Big Sur area of Monterey County. (See



Exhibit 1). The topography of the area is varied with numerous ridges and gullies, steep slopes, and a nearly flat area where the existing house is located. The majority of the lots in the area are typically forty acres in size and therefore historic development has been relatively sparse. Other private land in the area includes several small parcels approximately five acres in size adjacent to the subject property. These smaller parcels have the Pacific Ocean at or near their western sides, with two large ranches, El Sur and Brazil Ranch to the north, east, and south.

In contrast to the typically large lots of Big Sur, the project site is a 5.2-acre parcel located west of Highway One. The topography is very steep with rugged terrain and a flat area where the existing structure is located. This area of Big Sur is characterized by upland habitats of the Coast Range grassland, mixed evergreen forest, and chaparral. The sea front areas of this portion of the coastline support coastal bluff scrub, coastal sage scrub, northern coastal scrub and coastal prairie. The property is characterized predominantly of coastal sage scrub, although much of the project site is landscaped with non-native plants. The site is designated Watershed and Scenic Conservation Residential in the Monterey County Local Coastal Program. Combined designation includes Critical Viewshed area.

The County approval consists of demolition of an approximately 2,225 square feet one-story single-family dwelling and construction of an approximately 3,470 square feet partial two-story single-family dwelling. The site plan is attached as Exhibit 3. Development will disturb approximately 3,379 square feet of the parcel and is located 20 feet from the eastern property boundary. Landscape conditions require removal of exotic plants and use of native plants, and placement of a Scenic and Conservation Easement over the entire parcel exclusive of the immediate building envelope and driveway. The project is located between two seasonal streams that contain Arroyo Willow riparian forest, which are within 150 feet of the project site (Exhibit 6). The County has conditioned the project to avoid impacts to these sensitive areas. Conditions include preventing excavated material from entering either of the seasonal streams and disposing all excavated material off-site or incorporated into the project design.

## B. Visual/Scenic Resources

### 1. Relevant Local Coastal Program Provisions

The LCP visual resource protection policies prohibits new development visible from the critical viewshed:

#### 3.2.1 Key Policy

Recognizing the Big Sur coast's outstanding beauty and its great benefit to the people of the State and Nation, it is the County's objective to preserve these scenic resources in perpetuity and to promote the restoration of the natural beauty of visually degraded areas wherever possible. To this end, it is the County's policy to **prohibit all future public or private development visible from Highway 1 and major public viewing areas (the critical viewshed)**, and to condition all new development in areas not visible from Highway 1 or major public viewing areas





on the siting and design criteria set forth in Sections 3.2.3, 3.2.4, and 3.2.5 of this plan. This applies to all structures, the construction of public and private roads, utilities, lighting, grading and removal or extraction of natural materials [emphasis added].

This policy is implemented by IP Section 20.145.030:

Intent of Section: The intent of this Section is to provide development standards which will allow preservation of Big Sur's scenic resources and promote the restoration of the natural beauty of visually degraded areas wherever possible. To this end, all future public or private development which would be visible within the "Critical Viewshed", as defined in Section 20.145.020.V., shall be prohibited...

A. Development Within the Critical Viewshed

1. Critical Viewshed Determination

...

b. Development shall be considered to be within the critical viewshed if any portion of the proposed development is visible from Highway 1, including pull-outs, right-of-ways, and walkways at the highways edge or the major public viewing areas identified in the "critical viewshed" definition, as contained in Section 20.145.020.V. Visibility will be considered in terms of normal unaided vision in any direction for any amount of time at any season. As well, visibility shall be considered in terms of what portions of the development would be visible under existing conditions, regardless of landscaping or other techniques which could be later employed to screen the development. As such, development shall be considered to be within the critical viewshed if it would be visible from Highway 1 or major public viewing areas given existing conditions. The critical viewshed does not include areas visible from the hiking trails shown on the Trails Plan contained in the Big Sur Coast Land Use Plan.

Ocean views from Highway 1 shall not be obscured by artificial berming, mounding, or landscaping. Distant development, although technically within the line of sight from Highway 1 or other major public viewing area, shall not be considered to be within the critical viewshed if it has been designed and sited so as not to be seen from Highway 1 or other major public viewing areas as defined in Section 20.145.020.V. Exterior light sources shall be prohibited if such light source would be directly visible from Highway 1 or other major public viewing area as defined in Section 20.145.020.V.

All new development not in conformance with the approved representations shall be removed. (Ref. Policy 3.2.3.B.1)



More specifically, for projects involving the replacement of structures, replacements shall be encouraged to be resited out of the viewshed, but in no case shall they be more visible. Critical Viewshed Policy 3.2.3.A.7 states:

The general policy concerning replacement of structures shall be to encourage resiting or redesign in order to conform to the Key Policy. **Replacement or enlargement of existing structures**, or structures lost in fire or natural disaster **within the critical viewshed shall be permitted on the original location on the site, provided no other less visible portion of the site is acceptable to the property owner, and provided the replacement or enlargement does not increase the visibility of the structure.** Replacement or enlargement of structures outside the critical viewshed shall be permitted as long as such replacement or enlargement does not cause the structure to intrude into critical viewshed. (Emphasis added.)

This policy is implemented by IP Section 20.145.030.A.2.f:

When a structure is to be replaced, resiting or redesign should be required as necessary in order to better conform the Intent of this section. Replacement or enlargement of existing structures, or structures lost in fire or natural disaster within the critical viewshed shall be permitted on the original location on the site, provided no other less visible portion of the site is acceptable to the property owner, and provided the replacement or enlargement does not increase the visibility of the structure...

## 2. Analysis

The proposed development is located in the Big Sur critical viewshed, which is defined by LCP policy 3.2.2 as "...everything within sight of Highway 1 and major public viewing areas including turnouts...". As described by IP Section 20.145.030, development is considered to be in the critical viewshed "if any portion of the proposed development is visible from Highway 1, including pull-outs, right-of-ways, and walkways at the highways edge." As shown by the photographs attached as Exhibit 7, the project site is visible from at least two pullouts alongside Highway 1 and thus, within the critical viewshed.

As required by the LCP, the replacement of an existing residence within the critical viewshed must be located on portions of the site outside the viewshed where feasible. Where this is not feasible, the replacement residence cannot be any more visible than the existing residence. In this case, 5.2-acre parcel is highly constrained by steep topography, riparian corridors, and coastal sage scrub habitat. As a result, there are no viable options for relocating the residential development outside of the critical viewshed, and the applicable standard is that the replacement residence must not be any more visible than the existing residence.

To address this requirement, the replacement residence has been sited within the same general location as the existing residence. This takes advantage of mature Monterey pine and cypress



treess that currently exist around the periphery of the existing residence, which will help minimize the visibility of the replacement residence. In addition, the proposed design employs stone walls and a gray slate roof in an effort to harmonize with the natural surroundings. During the County's review, concerns regarding reflection from the extensive glass windows proposed for the south and southwest elevations were addressed by replacing 5 glass panes with a stone exterior, using non-reflective or glazed glass, and avoiding exterior lighting. In addition, the County conditioned the project in a manner that requires "the planting of a continuous row of trees at the perimeter of the building envelope that will serve to screen the property from the public viewshed in the future when the existing trees die" (see Condition 9, attached as Exhibit 5). Other County conditions that seek to achieve compliance with LCP visual resource protection provisions include requirements to: underground utilities (Condition 13); protect existing native trees (Condition 14); prohibit lighting that would be visible from Highway One or that would shine on the water, surrounding habitat, or other public viewing areas (Condition 15); and, convey a Scenic Conservation easement to the County over all portions of the parcel outside of the building envelope and access driveway (Condition 16). Special Condition 1 of this permit incorporates these important conditions as terms of the Commission's approval.

Notwithstanding these measures, on August 6, 2003, the Commission determined that the appeal of the project raised a substantial issue regarding compliance with LCP visual resource protection criteria. This determination was based on concerns that the larger replacement structure would be more visible from public vantage points. Concern was also expressed regarding the proposed use of landscaping to minimize the visibility of the replacement structure; as required by the LCP, avoiding new development within the critical viewshed is to be addressed in accordance with *existing* conditions, rather than relying on future landscaping. This is intended to avoid the installation of landscaping that would block scenic views and be incompatible with the natural open space character of the Big Sur coast.

Since that time, the applicant has provided additional photo documentation of both the existing and proposed structures that demonstrate the replacement structure will be no more visible than the existing structure (see Exhibit 7). Although the structure will be larger and taller than the existing residence, existing trees, the angle of the public view, and the proposed design and materials will avoid any increase in visibility.

In addition, the applicant has agreed to provide additional landscape screening (using native Monterey cypress) that will result in the replacement structure being *less* visible than the existing residence. As described above, the use of landscape screening is not an acceptable method of achieving compliance with Big Sur visual resource policies (e.g., to accommodate new development on a vacant site within the critical viewshed). In this case, landscape screening is appropriate because it will result in a structure that is less visible than the existing structure, and because the existing site is already heavily landscaped; the proposed plantings will not block scenic views, or be out of character with the existing surroundings.

Installation of the recently proposed planting, along with the landscaping required by Monterey County, is expected to prevent the replacement structure from being visible from public vantage



points once the plantings reach maturity. In order to fulfill this objective, the conditions of Commission approval require installation of the landscape screening prior to occupancy of the proposed residence. In addition, the conditions establish maintenance and performance standards for landscape screening to ensure that the replacement residence will not be visible from public vantage points within 5 years of its construction, and that the landscape screening will be maintained for the life of the structure (Special Conditions 2 and 6).

Also to ensure long-term protection of the critical viewshed, the conditions of this permit specifically prohibit any future increase in the height or size of the approved residence, or any development outside of the approved residence, deck, driveway, and existing road other than native habitat restoration, drainage and erosion control facilities approved by the Executive Director, or repairs and maintenance of the existing wastewater treatment system (Special Conditions 4, 5, and 6). Finally, to address potential impacts to the critical viewshed posed by the improvements to the wastewater system, water system, and driveway required by Monterey County's conditions of approval (Conditions 8, 17, 18, and 20), as well as any future repairs, maintenance or improvements to the approved residence and its infrastructure (i.e., road, water, and wastewater systems), the terms of the Commission's permit require that such development be authorized either through an amendment to this permit, or through separate coastal development permit approval by Monterey County (Special Condition 5).

### 3. Conclusion

In order to achieve compliance with the visual resource protection requirements of the Monterey County certified LCP, the project has been conditioned by the County to require landscape screening, underground utilities, tree protection, lighting plans, and a scenic conservation easement. These measures have been incorporated into the terms of the Commission's approval and supplemented with additional conditions to ensure that landscaping is installed, maintained, and replaced as necessary to prevent the replacement structure from being visible from public viewing areas within 5 years of its construction. The conditions also prohibit future expansions of the approved structure, or any development outside of the approved residence, deck, driveway, and existing road other than native habitat restoration, drainage and erosion control facilities approved by the Executive Director, and repairs and maintenance of the wastewater treatment system. All maintenance, repairs and improvements to the approved residence and its infrastructure (i.e., water, wastewater, and road systems) must also receive separate coastal development authorizations, either through amendments to this permit or subsequent County approvals. With these conditions, the project is consistent with the LCP visual resource protection standards cited above.

## C. Environmentally Sensitive Habitat Areas

### 1. Relevant Local Coastal Program Provisions

#### 3.3.1 Key Policy



All practical efforts shall be made to maintain, restore, and if possible, enhance Big Sur's environmentally sensitive habitats. The development of all categories of land use, both public and private, should be subordinate to the protection of these critical areas.

### 3.3.2 General Policies

...

3. The County shall require deed restrictions or dedications of permanent conservation easements in environmentally sensitive habitats when new development is proposed on parcels containing such habitats. Where development has already occurred in areas supporting sensitive habitat, property owners should be encouraged to voluntarily establish conservation easements or deed restrictions.

...

7. Land uses adjacent to environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New land uses shall be considered compatible only where they incorporate all site planning and design features needed to prevent significant habitat impacts, and where they do not establish a precedent for continued land development which, on a cumulative basis, could degrade the adjoining habitat.

...

9. The County shall require the use of appropriate native species in proposed landscaping.

Applicable ordinances of the Big Sur Implementation Plan that carry out the above policies include:

20.145.040.B.2. Deed restrictions or conservation easement dedications over environmentally sensitive habitat areas shall be required as a condition of approval for any development proposed on parcels containing environmentally sensitive habitats. Where the proposed project is to occur on an already-developed parcel, restrictions or easement dedications shall still be required. Easements and deed restrictions shall be required according to the provisions of Section 20.142.130. (Ref. Policy 3.3.2.3)

20.145.040.B.9. The use of native species consistent with and found in the project area shall be required in landscaping required as a condition of project approval. A list of appropriate native plant species is included as Attachment 4. (Ref. Policy 3.3.2.9)



## 2. Analysis

Environmentally sensitive habitat areas (ESHA) contained on the project site include two arroyo willow riparian forests. The site also supports coastal sage scrub habitat. Although the Big Sur LUP does not specifically identify this plant community as ESHA, it can support rare and valuable biological resources that may qualify it as ESHA in certain locations. For example, the coastal sage scrub habitat on the project site supports Monterey Indian paintbrush, which is classified as rare by the California Native Plant Society (CNPS List 4). As shown by the botanical map prepared by the project biologist (attached as Exhibit 6), the proposed project will not directly impact these sensitive areas.

According to the biological report prepared for the project, the area proposed for redevelopment outside the existing structure is primarily comprised of a landscaped garden. However, approximately 400 square feet of coastal sage scrub habitat will be removed to accommodate the proposed garage. In addition, the report identifies that project construction, particularly excavation to accommodate the proposed garage, has the potential to impacts sensitive marine and riparian resources if the excavated material is not properly handled, or if erosion and sedimentation is not effectively controlled.

In order to avoid these impacts and prevent the disturbance of environmentally sensitive habitat areas, the biological report calls for fencing areas containing Monterey Indian paintbrush during construction, preserving the remaining coastal sage scrub habitat, eradicating invasive exotic plant species from all accessible areas, implementing measures to control drainage and prevent erosion and sedimentation both during and after construction, and disposing excavated material off site. Implementation of these measures is required by Monterey County conditions of approval numbers 3, 4, 5, and 6.

The County conditions of approval also require landscape plans to be reviewed by a project biologist to provide for the re-establishment of native plants on the site in a manner that is compatible with the surrounding coastal sage scrub plant community (Conditions 9 and 19). Finally, the County has required the recordation of a scenic conservation easement outside of the approved development envelope as a means to protect the significant scenic and biological resources contained on the site. Implementation these measures are essential to carry out the LCP ESHA protection policies cited above, and therefore have been incorporated into the Commission's terms of approval by Special Condition 1.

In addition, the Commission has supplemented these measures to reinforce the County's prohibition against future development outside of the approved development envelope (Special Conditions 4 and 6) and to specifically prohibit the planting of exotic plant species on the project site (Special Condition 2), in order to achieve compliance with LUP Policies 3.3.1 and 3.3.2, as well as implementing ordinance 20.145.040.B. The Commission's conditions further require any repairs, maintenance, and improvements to the approved residence, or to the water system and roadway upon which the residence depends, to be authorized either by an amendment to this permit or separate coastal development approval by Monterey County (Special Condition 5). This includes, but is not limited to, a requirement to obtain separate coastal development



authorizations for improvements to the water system, wastewater system, and roadway/driveway required by County conditions 17, 18 and 20, as these components of the development were not adequately evaluated for potential impacts to environmentally sensitive habitats and visual resources during the local review.

### 3. Conclusion

The proposed replacement residence has been sited and designed to avoid disruption of the environmentally sensitive habitat areas supported on the project site. The conditions of approval described above are necessary to ensure that project construction will not have adverse impacts on adjacent sensitive habitat areas, and that these habitats will be protected in perpetuity. With these conditions the project is consistent with ESHA protection standards established by the Monterey County certified LCP.

## D. Water Quality/Marine Resources

### 1. Relevant Local Coastal Program Provisions

#### 3.4.1 Key Policy

The protection and maintenance of Big Sur's water resources is a basic prerequisite to the protection of all other natural systems. Therefore, water resources will be considered carefully in all planning decisions and approvals. In particular, the County shall insure that adequate water is retained in the stream system to provide for the maintenance of the natural community of fish, wildlife, and vegetation during the driest expected year.

#### 3.4.2 General Policies

...

2. The County will require adherence to the best watershed planning principles including: stream setbacks, stream flow maintenance, performance controls for development site features, maintenance of safe and good water quality, protection of natural vegetation along streams, and careful control of grading to avoid erosion and sedimentation.

#### 3.4.3 Specific Policies

...

### **B. *Rivers and Streams***

1. The effects of all new development proposals or intensification of land use activities or water uses on the natural character and values of the Big Sur coast's



rivers and streams will be specifically considered in all land use decisions. Subjects to be addressed in such evaluations include protection of scenic quality, water quantity and quality, wildlife and fish habitat, and recreational values. Land use proposals determined to pose significant impacts to the natural integrity of the stream must be modified accordingly. The County will request assistance from the Department of Fish and Game as a technical expert on wild life and fish habitat and mitigation measures.

## 2. Analysis

As described above, careful handling of excavated material and effective control of runoff both during and after construction is essential for the protection of marine habitats and coastal water quality. This is particularly true given the steep topography of the project site and the sensitivity of the adjacent riparian habitats and offshore marine environment. Accordingly, the County has conditioned the project to prohibit the disposal of excavated materials on-site or in the marine environment (Condition 4), and require the preparation and implementation of erosion control and drainage plans (Conditions 5, 6, 9, 12, and 19). These requirements are incorporated as conditions of the Commission's permit, and have been supplemented to require more specific standards for the drainage and erosion control measures to be implemented both during and after construction, and to ensure effective maintenance of the post-construction drainage facilities over the life of the project (Special Conditions 3 and 6).

The Special Conditions of Commission approval also require the applicant to obtain coastal development authorization(s) for the improvements to the water system (including fire protection water supply), wastewater system, and driveway required by County conditions 8, 17, 18, and 20, as well as for any repair, maintenance or improvements that may be needed in the future. In addition to ensuring the protection of scenic and biological resources discussed above, detailed review of such improvements is necessary to ensure a safe and adequate water supply for the proposed residence, as well as other residences that depend upon the same water supply. Careful review of such repairs, maintenance activities, and improvements is also needed to ensure that they do not result in erosion, sedimentation, or changes in drainage patterns that could degrade coastal water quality and disrupt sensitive riparian and marine habitats.

## 3. Conclusion

As required by the LCP Water Resource policies cited above, the Commission has considered the potential impacts of the proposed development on coastal water quality, and has incorporated and supplemented Monterey County's conditions of approval in order to prevent erosion and sedimentation, and to protect stream resources, coastal water quality, and marine habitats. With these conditions, the project is consistent with LCP standards requiring the protection of coastal water quality and sensitive aquatic habitats.





## E. Public Access and Recreation

Coastal Act section 30604(c) requires every coastal development permit issued for any development between the nearest public road and the sea include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3. Such a finding is required in this case because the proposed development is located between the first public road (Highway One) and the Pacific Ocean. The project will not impact any existing public access or recreation opportunities, and therefore, no mitigation is required.

## F. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has analyzed the environmental impacts posed by the project and identified changes to the project that are necessary to reduce such impact to an insignificant level. Based on these findings, which are incorporated by reference as if set forth herein in full, the Commission finds that only as conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA.

